

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

FREDERICK RENEE GATES,

Plaintiff,

v.

ROBERT NEUSCHNID,

Defendant.

Case No. 19-cv-07780-RMI

**ORDER DISMISSING PETITION  
WITH LEAVE TO AMEND**

Petitioner, a California prisoner, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in San Mateo County, which is in this district, so venue is proper here. *See* 28 U.S.C. § 2241(d). Petitioner paid the filing fee and consented to the jurisdiction of a Magistrate Judge (*see* dkts. 1, 2).

The court received two petitions. The first (dkt. 1) was sent from outside of prison, and the second (dkt. 3) was sent from the prison where petitioner is incarcerated. While the petitions contain overlapping claims, there are several differences.<sup>1</sup> Out of an abundance of caution, the petitions are dismissed with leave to amend. Petitioner should file an amended petition which sets forth each claim on which he wishes to proceed, and which describes the specifics of each claim. Petitioner is reminded that the court can only review claims and sub-claims that have been fully exhausted in state court.

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<sup>1</sup> For example, the first petition contains an as-applied and a facial challenge to a California law. First Pet. (dkt. 1) at 5. However, the second petition only contains a facial challenge to the law. *See* Second Pet. (dkt. 3) at 5. It is not clear what claim or claims have been exhausted. In addition, the habeas form in the first petition contains four claims. *See* First Pet. (dkt. 1) at 5. However, the habeas form in the second petition only contains three claims. *See* Second Pet. (dkt. 3) at 5.

1 For the foregoing reasons, the petitions are **DISMISSED** with leave to amend. The  
2 amended petition must be filed within **twenty-eight days** of service of this order, and carry the  
3 words AMENDED PETITION on the first page. Failure to amend within the designated time will  
4 result in the dismissal of the action.

5 Petitioner must keep the court informed of any change of address and must comply with  
6 the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
7 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*,  
8 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

9 **IT IS SO ORDERED.**

10 Dated: February 5, 2020

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14 ROBERT M. ILLMAN  
15 United States Magistrate Judge  
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